(1)

Supreme Court, U.S.
FILED
OCT 14 1986
JOSEPH F. SPANIOL, JR.
CLERK

86-615

NO.

IN THE SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1986

HEWLETTE ROGERS BROWN, Petitioner

v.

MARJORIE ANN BROWN, Respondent

PETITION FOR WRIT OF CERTIORI

TO THE

SUPREME COURT OF THE STATE OF CALIFORNIA

HEWLETTE ROGERS BROWN
3737 Aguilar Street
Los Angeles, Ca 90065
Tel. (213) 254-0632
IN PROPRIA PERSONA

5 cpys

QUESTION PRESENTED

Is the taking of private lands, and rents and profits accruing from private lands which have been adjudicated the separate property of one spouse to give to the other spouse in a dissolution of marriage procedure, in contradiction to the settled maximums of law which forbids such taking, and where the presiding Superior Court Judge refuses to comport with the law so as to establish for himself a title of nobility; a violation of the Due Process Clause of the U. S. Constitution?

TABLE OF CONTENTS

PAGE

Question Presented for Review.. i

Table of Contents..... ii

Table of Authorities..... iv

Prayer..... 1

Opinion Below..... 2

Jurisdiction..... 2

Constitutional Provisions Involved..... 3

Statement of the Case..... 4

Reason for Granting the Writ.. 5

This petition offers this court an opportunity to reestablish the constitutional concepts of the Due Process Clause. The founding fathers of the nation were firm in their resolve that this nation is to be governed by the rule of law. The Due Process Clause guarantees to every citizen that he shall not be deprived of his property except by the due process of the law. In the case at bar, the private and separate property of one spouse, which is not community property is ordered to be given to another spouse, in contradiction to the settled maximums of law which forbids such taking, is a violation of the Due Process Clause; and which, if allowed to stand uncorrected, would, ipso facto, create a title of nobility for the jurist making such an order.

In the design of our constitution there is one thread throughout and that is to exclude arbitrary power from every branch of government, and the foremost bastion of this principle is the Due Process Clause.

Conclusion..... 22

Appendix -A- Opinion of the Trial Court

Appendix -B- Opinion of the Appellate Court 2d District

Appendix -C- Order of the State Supreme Court-Denial

Appendix -D- Certificate of Service

TABLE OF AUTHORITIES CITED

CASES — Page

Fox v. Fox,
18 Cal 2d 645, 117 P.2d 325....13

In re Marriage of Dawley
17 Cal 3d 342, 131 Cal Rptr 3,
551 P.2d 333..... 14

In re Marriage of Lucas
(1980) 27 Cal3d 808,
166 Cal.Rptr.853..... 14

Kutter Estate
(1958) 160 CA2d 332,
160 P2d 624. 160 CA2d 332..... 18

Macado v. Macado
58 Cal.2d. 501..... 12

Marriage of Schultz
(1980), 105 C.A.3d 846..... 15

Miller v. Miller
38 Cal Rptr 571..... 13

People v. Carr
(1952) 113 CA2d 783,
248 P2d 977..... 18

People v. Garcia
(1954) 129 CA2d 251,
276 P2d. 668..... 18

CASES (continued) Page

People v. Mitchell
(1949) 91 CA2d 214,
205 P2d 1..... 18

STATUTES

Evidence Code 780, Section 2.....18

TREATISES

Markey, California Family Law, Vol. 2
Dissolution of Marriage,
Substantive Law..... 13

Witkin, Summary of California Law
(8th Ed) Vol. 4, Section 98... 9

NO.

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1986

HEWLETTE ROGERS BROWN, Petitioner

v.

MARJORIE ANN BROWN, Respondent

PRAYER

TO THE HONORABLE CHIEF JUSTICE AND ASSOCIATE JUSTICES OF THE SUPREME COURT OF THE UNITED STATES

May it please the court:

The petitioner, Hewlette Rogers Brown, respectfully prays that a writ of certiorai be issued to review the judgment of the Superior Court of Los Angeles County, entered April 12, 1984, and August 17, 1984, and the decision of the Court of Appeal, Second District, Division 2, of California, entered on June 12, 1986,

and the order denying Review by the Supreme Court of the State of California, entered August 20, 1986.

OPINION BELOW

The Court of Appeals denied petitioner's appeal and affirmed the decision of the trial court. The State Supreme Court, In Bank, denied the petition to review the decision of the Appellate Court. None of these orders were reported. A copy of these orders, and a copy of the the Superior Court judgment are attached in the Appendix.

JURISDICTION

On August 20, 1986, the State Supreme Court filed its order denying review of this cause. Jurisdiction of this Court is invoked under Title 28, United States Code, Section 1254(1).

CONSTITUTIONAL PROVISION INVOLVED

UNITED STATES CONSTITUTION

Article I, Section 9, Clause 8

"No title of nobility shall be granted by the United States. And no person holding any office of profit or trust under them shall, without the consent of the Congress, accept of any present, emolument, office, or title of any kind whatsoever from any king, prince, or foreign state."

Amendment V

"No person shall be held to answer for a capital or other infamous crime unless on a presentation or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the militia, when in actual service, in time of war or public danger; nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use without just compensation."

Amendment XIV

All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States, and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property without due process of law, nor deny to any

person within its jurisdiction the equal protection of the laws.

STATEMENT OF THE CASE

On June 29, 1985, The Honorable Judge Thomas C. Murphy, judge of the Superior Court of Los Angeles County rendered a decision adverse to petitioner in each and every issue involved in law suit for the dissolution of marriage to respondent. The suit involved the separate property of both parties. Because of an antenuptual agreement, adjudicated valid, there was no community property of this marriage. The marrage lasted three years and ten months.

After ruling the antenuptual agreement valid, the trial judge proceeded to award the separate property of petitioner to respondent.

Petitioner appealed the case to the Court of Appeal, Second District for the State of California, Division Two, on grounds that the trial court did not comport with the law throughout the

proceedings thereby denying petitioner Due Process of Law. Petitioner further alleges that the Honorable Judge Murphy's proclivity to refuse to comport with the law, his failure to meet the minimum standards required by the Code of Judicial Conduct for Judges of this State, and his manifest disdain for the oath of a judicial officer, is in fact tantamount to the establishment of a title of nobility for Judge Murphy, a violation of the provisions of Article I of the U.S. Constitution, and a trial and subsequent judgment by Judge Murphy is a denial to the petitioner his right to the Due Process of Law guaranteed by the State and Federal Constitutions.

Appellate Court denied the appeal on June 12, 1986. A petition to the California Supreme Court was filed timely, and denied on August 20, 1986.

REASON FOR GRANTING THE WRIT

THIS PETITION PROVIDES THIS COURT AN OPPORTUNITY TO REAFFIRM THE BASICS OF THE DUE PROCESS CLAUSE. THE FOUNDING FATHERS OF THIS NATION WERE FIRM IN THEIR RESOLVE THAT THIS NATION IS TO BE GOVERNED BY THE RULE OF LAW. THE U. S. CONSTITUTION, IN SEVERAL OF ITS ARTICLES AND AMENDMENTS STRESSES AND DEMANDS THAT NO CITIZEN IS TO BE DEPRIVED OF HIS PROPERTY WITHOUT THE DUE PROCESS OF LAW. IN THE CASE AT BAR, THE PRIVATE AND SEPARATE PROPERTY OF ONE SPOUSE, WHICH IS NOT COMMUNITY PROPERTY, IS ORDERED TO BE GIVEN TO ANOTHER SPOUSE, IN CONTRADICTION TO THE SETTLED MAXIMUMS OF LAW WHICH FORBIDS SUCH TAKING, IS A VIOLATION OF THE DUE PROCESS CLAUSE; AND WHICH, IF ALLOWED TO STAND UNCORRECTED, WOULD, IPSO FACTO, CREATE A TITLE OF NOBILITY IN THE JURIST MAKING SUCH AN ORDER.

I.

THERE IS A VIOLATION OF THE DUE PROCESS CLAUSE WHEN THE COURTS TREAT SEPARATE PROPERTY AS COMMUNITY PROPERTY IN A DISOLUTIONMENT OF MARRIAGE PROCEEDING WHERE THERE WAS NO COMMUNITY PROPERTY INVOLVED, CONTRARY TO THE SETTLED MAXIMUMS OF LAW.

Antenuptual Agreement Found Valid

The antenuptial agreement states, inter alia, as follows:

"Intent That Property Remain Separate.

"Section 1.05 The parties desire that all property owned by either of them and additional property of whatever nature and wheresoever located which comes to either of them from any source during there marriage shall be and remain their respective separate property...Marjorie Ann Brown covenants and agrees that all property owned by Hewlette Rogers Brown of whatever nature and wheresoever located and any property which he may hereafter acquire, whether real, personal, or mixed, including but not limited to any earnings, salaries, commissions, or income resulting from his personal services, skills, and efforts shall be and remain his sole and separate property to use and dispose of as he sees fit and as if no marriage had been entered into.

"MARJORIE ANN BROWN hereby acknowledges that she voluntarily relinquishes all of her interest in such property to HEWLETTE ROGERS BROWN if they should marry and understands that such earnings, salaries, commissions, or income of HEWLETTE ROGERS BROWN after the marriage, which would in the absence of this agreement would be community property of the parties, are to be and remain the separate property of HEWLETTE ROGERS BROWN." CT429:2-22. (1)

(This case was bifurcated, judgment as to status, ordered June 1, 1982 CT43)

In the statement of decision (on reserved issues--June 29, 1984), Judge Murphy says: "Now we come to the antenuptual agreement. Is it valid or invalid? Well, they are valid..." CT351:23-24.

---

1. Reference to the Reporter's Transcript and the Clerk's Transcript are noted by "RT" and "CT", "respectively followed by the page and line number whenever possible.

Burbank Separate Property of Petitioner

Again, in the statement of decision, Judge Murphy states: (with reference to the husbands separate property) "I'm going to hold and I am going to order the possession of the California Street (Burbank) property be given to Rogers Brown. RT846:11-13. Later on in the statement of decision Judge Murphy states: (with reference to the same property), "So if she has any community interest, and the Court finds that she does not... ." RT847:2-3. (Emphasis added.)

Yet, the trial judge awards to respondent $20,000 of moneys owed petitioner by respondent for a community property interest [in the Burbank property] that this same judge said in a

ruling in the previous sentence..."So if she has any community interest, (in the Burbank Property), and the court finds that she does not..." RT847:2-3.

In its opinion, The Appellate Court states: "...the court, in issuing its oral decision in the matter, observed that there was conflicting evidence regarding whether the asset was community or separate property..." This statement is simply untrue. On page 845 of the Reporter's Transcript, this matter is discussed. Not only did the court not make this observation, but if the court had made such an observation it would not have been supported by a scintilla of evidence. This fiction is the only way the Appellate Court could have affirmed the Trial Court's decision. This is a

violation of the Evidence Code, a failure to comport with the law, and an abuse of discretion constituting a denial of the Petitioner's right to the due process of law.

The court found that the down payment, and all other payments for the property was made from Petitioner's separate property and that Respondent was not a signatory on the note, and the court further found that the lender did not even rely on Wife's credit in granting the loan. There was no "conflicting evidence" of any kind. This is in the record, and no where in the record is anything in evidence that conflicts with this evidence, or of this finding of fact by the trial court.

This failure of both the Trial

Court and the Appellate Court to comport with the law by fabricating evidence, misquoting the record, and assuming facts not in evidence, is abuse of discretion and a violation of petitioner's rights under the Due Process Clause.

II

HAVING ONCE BEEN CHARACTERIZED AS SEPARATE PROPERTY, THE COURT LACKS JURISDICTION TO AWARD SEPARATE PROPERTY OF ONE SPOUSE TO THE OTHER

It is well-settled that, once property is characterized as separate, the court lacks jurisdiction to make any award of one spouse to the other. This has been the law in California for over thirty years and is still the law today. Machado v. Machado, 58 Cal.2d 501, 507, 25 Cal.Rptr. 87,90, 375 P.2d 55, 58;

Miller v. Miller, 38 CalRptr. 571; Fox v. Fox, 18 Cal.2d 645, 117 P.2d 325 are among the cases cited.

The Family Law Act had no effect on this long line of legal authority. See generally Vol 7. Witkin Summary of California Law, Community Property, Section 98 (8th ed 1974). Vol.4. Witkin Summary of California Law, Community Property, section 72(a) 7th ed. is unchanged by the 8th ed. See also Vol 2 Markey, Cal Family Law, Dissolution of Marriage Substantive Law.

The facts of this case fall squarely within the above cited rule of law. The court finds the antenuptual agreement to be valid. RT 636, 695. This agreement provides that there is to be no community property. See In Re

Marriage of Dawley 17 Cal.3d 342, 131 Cal.Rptr. 3, 551. The court found that appellant purchased the property with his separate property. Court admitted into evidence a grant deed vesting title in appellant as his sole and separate property, with respondent joining in the vesting as such, and also a quit claim deed signed by the respondent, all recorded the same date. CT 437 and CT 440. The court properly finds that the "Burbank property" is the sole and separate property of appellant. Marriage of Lucas (198) 27 Cal.3d 808, 166 Cal.Rptr. 853.

III

SILENCE IN THE RECORD FAVORS THE APPELLANT AS INDICATING THAT NO EVIDENCE WAS INTRODUCED AT THE TRIAL TO SUPPORT THE ORDER BEING APPEALED.

In many of the issues in this case

before the bar there is no evidence, substantial or otherwise, to support Trial Court's findings. Case law establishing the rule that silence in the record favors the appellant as indicating that no evidence was introduced at the trial to support the order being appealed, is found in Marriage of Schultz (1980), 105 C.A.3d 846. As an example, There is nothing in the record to indicate that there was any community property interest created at any time. The only evidence in the record is that there is no community property interest in this marriage, by operation of the antenuptual agreement.

Similarly, Husband owned a 1/2 interest (as tenant-in-common with Wife) in a valuable lot in Palos Verdes, which

his wife conveyed to him after coverture. Upon such conveyance this property became the separate property of petitioner by operation of the antenuptual agreement, which the court upheld as valid. Hence, the court lacked jurisdiction over the matter. Notwithstanding, the court did take jurisdiction and in a Procrustean effort to find for the Respondent, the Trial Court ignores the presumption that a witness is telling the truth (there being no evidence to the contrary), the rule of law that fraud is never presumed, (and there is no evidence of fraud anywhere in the record of this trial), and misquotes the evidence of consideration in the record which demonstrated more than adequate or sufficient consideration, and misapplied

the law concerning the date to determine the value of the property in question; in order to divest Husband of this 1/2 tenant-in-common interest in said property in violation of Husband's Constitutional right to the Due Process of Law.

IV

THROUGHOUT THE TRIAL AND IN THE DECISION, THE JUDGE FAILED TO WEIGH ALL OF THE EVIDENCE IN AN IMPARTIAL MANNER, AND TO REFRAIN FROM ARBITRARY, OR UNCONSCIONABLE FINDINGS, CONDUCT OR ATTITUDE. WHEN A JUDGE RENDERS A JUDGMENT THAT IS CLEARLY AGAINST LOGIC AND REASON AND THE EFFECTS OF THE FACTS BEFORE THE COURT, THERE IS A VIOLATION OF THE DUE PROCESS CLAUSE.

The trial judge found that "there was a total failure of consideration, a total falsification of consideration", because the court said it disbelieved testimony of petitioner. Testimony of

petitioner was never impeached...no evidence of any kind was adduced to contradict petitioner's evidence of consideration. There is nothing in the record which would overcome the basic presumption that petitioner was testifying truthfully when he described his activities concerning building a home for petitioner and respondent as agreed. Evidence Code 780, Section 2. People v. Mitchell (1949) 91 CA2d 214, 205 P2d 101; People v. Carr (1952) 113 CA2d 783, 248 P2d 977; People v. Garcia (1954) 129 CA2d 251, 276 P2d 668; Kutter Estate (1958) 160 CA2d 332; Kutter Estate (1958), 160 P2d 624.

There is absolutely nothing in the record, or by the conduct of the Petitioner during the trial, that,

legally, could permit the trial court to disregard the testimony of, and impugn the veracity of the Petitioner, and when the Court did so, it was a clear abuse of discretion which deprived petitioner of due process of law under the State and Federal Constitutions.

The court also, ipse dixet, disregarded evidence of a total of $12,000 out-of-pocket expenses directly involved in this issue, paid from petitioner's separate funds--including the court's unlawful refusal to take judicial notice of a an adjuticative fact in the form of a certified statement of the satisfaction of judgment supported by a certified copy of a cashier's check for over $5,000.

The Trial Court ordered petitioner

to pay to respondent $700 per month rent on petitioner's separate property, in which respondent never had an interest, simply because respondent, of her own volition vacated the property before the judgment became final. Such an order is beyond the jurisdiction of the trial court. The court has no authority to require petitioner to pay rent on his own property to any one who is not lawfully entitled to such rent. This is one of the many erratic and unconscionable rulings of the trial court which deprived Petitioner of his right to the Constitutional guarantees of Due Process and Equal Protection of the law.

V.

WHEN A SUPERIOR COURT JUDGE REFUSES TO COMPORT WITH THE LAW, CONSISTANTLY,. OPENLY, AND NOTORIOUSLY VIOLATES HIS OATH OF OFFICE, AND THE CODE OF JUDICIAL CONDUCT IT IS, IPSO FACTO, THE ESTABLISHMENT OF A TITLE OF NOBILITY; FORBIDDEN BY ARTICLE I, SECTION 9, CLAUSE 8 OF THE UNITED STATES CONSTITUTION.

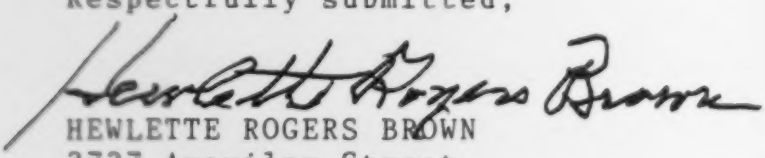
Petitioner respectfully submits, that The Honorable Judge Thomas C Murphy by his conduct has established a title of nobility for himself, which is forbidden by the constitution, and a trial before him, and an order from his court is in violation of Petitioner's guarantee to the due process of law.

CONCLUSION

It is for the foregoing reasons and established facts, that Petitioner, Hewlette Rogers Brown, respectfully requests that a writ of certiorari be issued to review the judgments of the Trial Court and the Court of Appeal, Second Appellate District, State of California.

Dated October 10, 1986

Respectfully submitted,



HEWLETTE ROGERS BROWN
3737 Auguilar Street
Los Angeles, Ca. 90065
In Popria Persona

APPENDIX A

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF LOS ANGELES

HEWLETTE ROGERS BROWN) Petitioner)	NO. NCD 22601
v.)	FURTHER JUDGMENT ON RESERVED ISSUES AFTER BIFURCATION
MARJORIE ANN BROWN,) Respondent.)	

This matter came on regularly for hearing on reserved issues on November 9, 10, 14 December 12,13 14, 15, 19, 20 1983 and February 10, 1984, the Honorable Thomas C. Murphy, judge presiding. Petitioner was present, except for February 10, 1984, and represented by attorney Richard F. Hamlin. Respondent was present and represented by her attorney, James Zander. After considering evidence, both oral and documentary and considering the argument of the parties, and having rendered a Statement of Decision, the

court orders, adjudges and decrees the following:

1. Neither party is awarded spousal support from the other party.

2. Petitioner is awarded as his sole and separate property the land more particularly described as:

> Lot 21 of tract No. 9666 as per map described in Book 139, pages 51 and 52 of Maps, in the office of the County Recorder of Los Angeles County. EXCEPT the Northerly 2 feet thereof.

which is commonly known as 729 California Street, Burbank, California, together with all improvements thereon. Respondent is ordered to surrender possession of the property to petitioner within thirty (30) days. Respondent is ordered to sign all deeds and documents necessary to effect the transfer of title in the property to

petitioner. Respondent is further ordered to take all acts necessary, including acknowledgment of her signature before a notary, which may be necessary to transfer title in the property to petitioner. Respondent is ordered to take these actions within thirty days (30) days. If the respondent fails to execute and acknowledge all deed and documents, or fails to take all acts necessary to transfer title to the property to petitioner, the court reserves jurisdiction to have the deeds and documents signed and acts taken by the clerk of the court.

3. Respondent is awarded as her sole and separate property the promissory note in favor of petitioner and respondent and signed by the Gardners, together with the deed of trust on the Palos Verdes lot which secures

the promissory note, and all of the proceeds from the sale of the Palos Verdes "hillside" property. Petitioner is further ordered to take all acts necessary, including acknowledgment of his signature before a notary, which may be necessary to transfer title to respondent. Petitioner is ordered to take these actions within (30) days. If the petitioner fails to execute and acknowledge all deeds and documents, or fails to take all acts necessary to transfer title to the property to respondent, the court reserves jurisdiction to have the deeds and documents signed and acts taken by the clerk of this court.

4. Petitioner is awarded a credit against other monies due to respondent in the sum of $3,000.00 for architect's fees, less $1,000.00 for monies which petitioner has

previously received from the proceeds of the promissory note, leaving petitioner with a credit of $2,000.00.

5. Petitioner is ordered to pay to respondent as a contribution towards her attorney's fees the sum of $15,000.00 less the $2,000.00 credit described in Paragraph 4 of this judgment, for a net due of $13,000 payable $5,000.00 in 60 days, $5,000.00 in 120 days and $3,000.00 in 180 days.

6. Petitioner is awarded the proceeds from the sale of the motorhome, license number unknown, as his sole and separate property.

7. Petitioner is ordered to take all steps necessary to secure receipt of his army pension benefits and to pay to respondent her 12% interest in such benefits as they are received. The court reserves jurisdiction to

make an award in that amount from the separate property of petitioner.

Dated: June 29, 1984

/s/ Thomas C. Murphy
THOMAS C. MURPHY
Judge of the Superior Court

Filed: June 29, 1984

APPENDIX B

-0-

NOT FOR PUBLICATION

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
SECOND APPELLATE DISTRICT
DIVISION TWO

In re the Marriage of

HEWLETTE ROGERS BROWN, Petitioner, Appellant, and Cross-Respondent.	2nd Civil. No. B008677 Sup. Ct. No. NCD 22601B FILED JUNE 12, 1986
and	
MARJORIE ANN BROWN, Respondent and Cross-Respondent.	

APPEAL from a judgment of the Superior Court of Los Angeles County. Thomas C. Murphy, Judge. Affirmed.

Hewlette Rogers Brown, attorneys for Petitioner/Appellant/Cross-Respondent.

Morton Minikes, A Law Corporation and

Gerald L. Friedman, A Professional Corporation, attorneys for Respondent and Cross-Appellant.

Hewlette Rogers Brown ("husband") and Marjorie Ann Brown ("wife") both appeal from a judgment resolving certain property and support issues in the dissolution of their third marriage to each other. We affirm.

The parties married for the third time on April 30, 1977 and separated in January 1981. Final judgment as to status was entered on August 5, 1982 and as to the remaining issues on June 29, 1984.

In anticipation of the marriage, the parties executed an antenuptual agreement one month prior to their April 1977 wedding. The agreement contained a list of each party's

assets and provided that the "property [then] owned by [either spouse] and [any] additional property which [they] might] acquire [during their third marriage], whether real, personal, or mixed, including but not limited to any earnings, salaries, commissions, or income resulting from [their] personal services, skills and efforts shall be and remain [the acquiring party's] sole and separate property to use and dispose of as [such party] sees fit and as if no marriage had been entered into." The trial court found the agreement to be valid and the parties do not here contest that decision.

On appeal, husband challenges, inter alia, (1) the denial of his motion to discharge wife's attorney, (2) the finding that certain Palos Verdes real estate was wife's separate property, (3) the order

directing him to "take all steps necessary to secure" the portion of his army pension awarded to wife in an earlier divorce proceeding, (4) the award of wife's attorney's fees, and (5) the failure to credit him with the value of property allegedly taken or wasted by wife. Wife contends the trial court erred in denying her request for spousal support and the proceeds from the sale of the motorhome.

We first address husband's contention that the trial court erred in denying his motion to remove wife's trial counsel. The motion was made prior to the commencement of the trial on grounds that the attorney had earlier represented husband in an action filed by the parties against an architect in connection with the Palos Verdes property and had "personal animosity" toward husband as a

a result of a dispute over legal fees incurred in connection therewith. The Palos Verdes property had been awarded to wife in one of the parties' earlier dissolutions, but husband sought to have the proceeds from the sale of the property declared a community asset in the divorce proceeding now before us.

"The ethics of the legal profession in California prohibit a lawyer from accepting employment adverse to a former client relating to a matter in reference to which he has obtained confidential information by reason of or in the course of his employment by such...former client." (Globe Van Lines, Inc. v. Superior Court (1983) 144 Cal.App.3d 483, 487-488; Rule 4-101, Rules Prof. Conduct of State Bar.) The purpose of

the rule is to protect the confidential relationship that exists between an attorney and a client. (Ward v. Superior Court) 70 Cal.App.3d 23, 34; Jacuzzi v. Jacuzzi bros., Inc. (1963) 218 Cal App.2nd 24, 28.) Disqualification is appropriate when confidential information substantially related to the current representation has been imparted during the former representation. The disclosure of such confidential information may be presumed if there is a substantial relationship between the former representation and current representation and it "appears by virtue of the nature of the former representation and the relationship of the attorney to his former client [that] confidential information material to the current dispute would normally have been imparted to the attorney

or [his] subordinates..." (Global Van Lines, Inc. v. Superior Court, supra, at pp. 488-489.)

In the matter before us, the declarations submitted in support of husband's motion to disqualify wife's attorney fail to set forth any facts to support a finding or, for that matter, an inference, that confidential information had been disclosed by husband to the challenged attorney in the course of his previous representation of the parties. The motion was properly denied.

Husband next asserts the trial court abused its discretion in confirming that the proceeds from the sale of the Palos Verdes property were wife's separate property. The property was listed in the antenuptual agreement as wife's separate property. In

August 1977, wife recorded a grant deed transferring a 50 percent interest in the property to husband as tenant-in-common. At trial, husband claimed he had expended various sums and a substantial amount of time in connection with the development and financing of the property.

The finding of the trial court that property is either separate or community is binding on appeal if it is supported by substantial evidence, or based on conflicting evidence or evidence that is subject to different inferences.(In re Marriage of Gonzolas (1981) 116 Cal.App3d 556, 560-561; Beam v. Bank of America (1971) 6 Cal.3d 12, 25.) In the cause at bench, husband argued that he incurred the fees and expended the time mentioned above in consideration of wife's agreement to grant him a half interest

in the property. In response, wife claimed that the deed was executed under duress. The court noted that it disbelieved portions of both parties' testimony, but also found that "there [was] a total failure , a total falsification of consideration." Accordingly, the court, appropriately exercising its discretion, determined that the proceeds from the sale of the Palos Verdes estate belonged to wife as her separate property. Husband, however, was awarded $3,000 for architect's fees paid from husband's separate property, less $1,000 which the court determined husband previously received from the proceeds of the sale of the property. The trial court's resolution is amply supported by the evidence.

Husband also asserts the trial court had no "jurisdiction" to include in its judgment

an order pertaining to wife's interest in his army pension which she had been awarded in an earlier marital settlement. The contention is totally without merit. The "assets or interests" awarded wife in the prior dissolution were specifically listed by wife in her separate property declaration filed in connection with the instant case. Moreover, husband himself, in including the "Army Retirement" as one of his separate assets in the antenuptual agreement, expressly excepted therefrom wife's "interest as per court order." Contrary to husband's assertion, wife's interest in his pension was properly before the trial court which, in reviewing the issue, observed that husband had "dillied and dallied" long enough in procuring his pension." Accordingly, the court, in entering its judgment in the dissolution now

before us, expressly reserved jurisdiction to make an award from husband's separate property in an amount equivilant to the 12 1/2 percent interest previously awarded wife, in the event husband fails to "secure receipt of" and "pay to wife" her interest in his pension benefits. The trial court's order was entirely appropriate in view of the evidence before it.

Now we turn to wife's contention that the trial court abused its discretion in failing to award her spousal support and husband's related assertion that the trial court abused its discretion in ordering him to pay wife rent for the use of a family residence awarded to him as his separate property.

Civil Code Section 4801, subdivision (a) provides that "[i]n any judgment decreeing

the dissolution of a marriage..., the court may order a party to pay for the support of the other party any amount, and for any period of time, as the court may deem just and reasonable." The subdivision set forth certain factors the court is to consider in making such an award, including the earning capacities, needs, obligations and assets of the parties, as well as the duration as the marriage. Section 4801, subdivision (d) provides that any such order regarding support "shall terminate at the end of the period specified in the order and shall not be extended unless the court in its original order reserves jurisdiction." Nothing in the section actually requires an award of spousal support if the court determines same is not appropriate or necessary.

At bench, one of the issues presented at

trial as whether the parties' Burbank residence was a community asset or husband's separate property. In May 1981, the trial court granted wife exclusive use of this residence pending trial. At the conclusion of trial, the court, in issuing its oral decision in the matter, observed that there was conflicting evidence regarding whether the asset was community or separate property, but concluded that that the asset should be awarded to husband as his separate property. The court, however, also noted that under the 1981 order, wife had been living in the house rent free for years. The court assessed the rental value of the property at $700 per month and concluded that wife, in residing in the house during trial, had received a benefit in the amount of $25,000. The court then stated, "So, if she had any community

interest and the Court finds that she does not, but in an abundance of caution to protect this woman's right's I will allow her a credit on any community interest she has of $20,000 out of the rents that ordinarily would be due from her having the benefit of "the use of the house". Additionally, noting that wife would still be obligated to husband in the amount of $5,000, the court then eliminated this remaining debt by awarding a credit in the amount of $5,000 for spousal support. Judgment subsequently entered by the court specifically awarded the residence to the husband as his separate property and stated the parties were not to receive spousal support. In view of the evidence presented and the relatively short duration of the marriage, the trial court's decision was equitable and appropriate.

We find no error in the trial court's disposition of the matters which are the subject of the parties' remaining contentions on appeal.

The judgment is affirmed. Each party to bear its own costs on appeal.

NOT FOR PUBLICATION .

/s/ Beach , J.

BEACH

We concur

/s/ Compton , ACTING, P.J.

/s/ Gates , J.

APPENDIX C

ORDER DENYING REVIEW
AFTER JUDGMENT BY THE COURT OF APPEAl
2d DISTRICT, DIVISION 2, NO. B008677

IN THE SUPREME COURT OF THE STATE OF CALIFORNIA
IN BANK

IN RE MARRIAGE OF BROWN

HEWLETTE ROGERS BROWN
V.
MARJORIE ANN BROWN

Appellant's petition for review DENIED

Supreme Court
FILED
August 20, 1986

BIRD
Chief Justice

APPENDIX D

IN THE SUPREME COURT
OF THE UNITED STATES

OCTOBER TERM 1986

HEWLETTE ROGERS BROWN,
Petitioner

v.

MARJORIE ANN BROWN
Respondent

CERTIFICATE OF SERVICE

I, Hewlette Rogers Brown, the petitioner in this cause, certify:

That I have served three copies of the Petition for Writ of Certorari on counsels for the respondents by depositing same in a United States Post Office mail box at Los Angeles,

California, 90065, on the 10th day October 1986, with first class postage prepaid and with the envelope addressed as follows:

Morton Minikes, Esq.
Attorney at Law
2001 Wilshire Boulevard
Suite 520
Santa Monica, Ca 90403

(2) The above named party is the only party required to be served.

(3) I further state to the best of my knowledge that the court's copies of these documents were enclosed in a package, properly addressed to the Clerk of this Court, and that said package was deposited in the United States Mail at

Los Angeles, California, with first class postage prepaid on the 10th day of October 1986, which is within the permitted time of filing.

Hewlette Rogers Brown

3737 Aguilar Street

Los Angeles, Ca 90065

State of California
County of Los Angeles

On October 9, 1986, before me, the undersigne personally appeared Hewlette Rogers Brown, proved to me to be the person whose name is subscribed to the within instrument and acknowledged that he executed the same.

Paola C. Kirchberg

OFFICIAL SEAL
PAOLA C. KIRCHBERG
NOTARY PUBLIC CALIFORNIA
LOS ANGELES COUNTY
My Comm Expires Dec 28 1988